



1-190A002

Norfolk Southern Corporation  
Law Department  
Three Commercial Place  
Norfolk, Virginia 23510-2191

8330-6  
RECORDATION NO. 8330-6  
FEB 1991

J. Gary Lane  
Senior General Attorney

Writer's Direct Dial Number

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JUL 9 1991 - 10 00 AM  
INTERSTATE COMMERCE COMMISSION

July 3, 1991

Mr. Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, D. C. 20423

Dear Mr. Strickland:

In accordance with 49 U.S.C. § 11303 and the Commission's Rules, I submit herewith for recording with the Commission three (3) counterparts, properly executed and acknowledged, of the document described below.

This document is a Release and Satisfaction and Bill of Sale, a secondary document, dated as of July 2, 1991. The primary document to which this is connected is recorded under Recordation No. 8330.

The names and addresses of the parties to the secondary document are as follows:

LESSOR/TRUSTEE: Citibank, N. A.  
120 Wall Street  
New York, NY 10043

LESSEE/GUARANTOR: Norfolk Southern Railway Company  
(formerly Southern Railway Company)  
Three Commercial Place  
Norfolk, VA 23510

The equipment originally covered by the document is generally described as follows:

<u>Number of Units</u>	<u>General Description</u>	<u>AAR Symbol</u>	<u>Railroad's Road Numbers (both inclusive)</u>
467	70-ton Pulpwood Cars	LP	140515-140981
230	70-ton Box Cars	XM	528970-529199
150	100-ton Covered Hopper Cars	LO	91950-92099

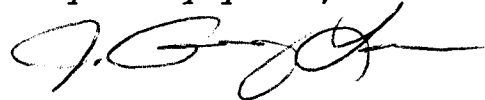
C. Quintanilla - Jimmy M. Dawson

A fee of \$15.00 is enclosed. Please return two of the original counterparts, stamped with the Commission's recordation data, to J. Gary Lane, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510.

A short summary of the document to appear in the index follows:

Release and Satisfaction and Bill of Sale dated July 2, 1991, to terminate Equipment Trust Agreement with Recordation No. 8330, dated May 1, 1976, and covering 467 70-ton pulpwood cars numbered 140500-140514, 230 70-ton box cars numbered 528970-529199, and 150 covered hopper cars numbered 91950-92099.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'J. Gary Lane', with a stylized flourish extending to the right.

J. Gary Lane

jgl

Enclosures

MAY 18 1976 11 15 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD CARS

THIS LEASE dated the 12 day of May, 1976, by and between First National Bank of Louisville, a national banking association (the "Lessor") and AMAX Coal Company, a division of AMAX Inc., a corporation (the "Lessee").

W I T N E S S E T H :

WHEREAS, Lessor has at the request of Lessee purchased from the Ortner Freight Car Company (the "Builder"), the eight railroad cars described in Schedule I attached hereto, and Lessee desires to lease the Units from Lessor on the conditions hereinafter set out;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by Lessee, Lessor hereby leases the Units to Lessee upon the following terms and conditions:

1. UNITS LEASED. This is a Lease of the Railroad cars described in Schedule I hereto (the "Units").

2. ACCEPTANCE OF UNITS. The Lessee has inspected the Units and hereby acknowledges receipt of the Units in good condition and accepts the Units as satisfactory for the purposes of this Lease.

3. DISCLAIMER OF WARRANTIES. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, whatever claims and rights the Lessor may have, as against the Builder.

4. TERM. The term of this Lease as to each Unit shall (unless terminated in accordance with paragraph 7 hereof) begin upon the date hereof and end May 31, 1989 (the "Initial Term") or upon the expiration of the last renewal hereof made pursuant to paragraph 14 hereof, whichever date is later.

5. RENTAL. Lessee hereby agrees to pay to Lessor on May 31, 1976 as rental for the Units an amount equal to 0.029751% of the cost of the Units (as set out in Schedule I) for each day elapsed from the date hereof to May 31, 1976 (including May 31, 1976 and the date hereof).

Thereafter during the Initial Term Lessee agrees to pay Lessor 26 semi-annual rental payments due on each November 30th and May 31st and each in an amount equal to 5.3552% of the cost of the Units then subject to this Lease (including the cost of any Units for which a payment is to be then made as a result of a Casualty Occurrence pursuant to paragraph 7), the last such payment being due May 31, 1989.

During any renewal term the rental shall be the "Fair Rental Value" of the Units then subject to this Lease as agreed upon by the Lessor and Lessee or as established by the Appraisal Procedure as set out in paragraph 14.

In the event any date upon which rent is due Lessor is a day upon which Lessor is not open for business, the payment due thereon shall be due on the next succeeding day upon which Lessor is open for business.

All payments due under this Lease shall be made to Lessor in immediately available funds or by draft delivered to Lessor three days prior to the date the payment is due.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, including but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Builder or otherwise, nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

6. IDENTIFICATION MARKS. The Lessee has caused and will cause each Unit to be kept numbered with the identifying number set forth in Schedule I hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than six (6) inches in height, the following words:

THIS CAR IS OWNED BY THE FIRST NATIONAL  
BANK OF LOUISVILLE AND LEASED TO AMAX  
COAL COMPANY

or other appropriate words designated by the Lessor, with appropriate changes therein and additions thereto as from time to time may be required by law in order to protect the title of

the Lessor to such Unit and the rights of the Lessor under this Lease. The Lessee will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the indentifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

7. PAYMENT FOR CASUALTY OCCURRENCES. In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of Lessee, irreparably damaged, from any cause whatsoever or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, the Lessee shall within 30 days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor in regard thereto. On the next succeeding rental payment date the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value, as defined in Schedule II hereto, of such Unit as of the date of such payment. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or condemnation of such Unit) the Lessor shall be entitled to recover possession of such Unit. Following the giving of written notice of a Casualty Occurrence the Lessee shall cooperate fully with the Lessor in seeking bids for the purchase of any such Unit of which Lessee shall be entitled to retain the proceeds of such sale up to an amount equal to the Casualty Value previously paid by the Lessee herunder. Any excess of such proceeds over the Casualty Value previously paid by the Lessee shall be retained by the Lessor.

Following payment of the Casualty Value, Lessee shall be entitled to the proceeds of any insurance covering the Unit(s) suffering a Casualty Loss up to an amount not in excess of the Casualty Value previously paid, but in no event shall the aggregate of amounts refunded to Lessee exceed the Casualty Value.

Except as hereinabove in this paragraph 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit.

8. TAXES. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or federal taxes (other than any federal income tax payable by the Lessor in consequence of the receipt of payment provided herein and other than the aggregate of all state or city income taxes or franchise

taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees (and any charges, fines or penalties in connection therewith) (hereinafter call "impositions") hereafter levied or imposed upon or in connection with or measured by, this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor hereunder. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event any reports with respect to impositions are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show the interest of the Lessor in such Units or will notify the Lessor of such requirement and will make such reports in such manner as shall be satisfactory to the Lessor.

In the event that, during the term of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions, pursuant to this paragraph 8, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

9. REPORTS BY LESSEE. On or before May 1, of each year, commencing with the year 1977, Lessee will furnish to Lessor:

A. An accurate statement of (i) all Units that have suffered a Casualty Occurrence during the preceding calendar year and (ii) all major repairs to any Unit commenced or completed during the preceding calendar year.

B. A statement listing all Units subject to this Lease the preceding December 31 and stating that at such time such Units were (i) in good operating condtion, (ii) in need of repair (describing the needed repairs) or (iii) undergoing repairs (describing such repairs).

C. A statement that all Units are marked in accordance with paragraph 6 herein.

D. Lessee's annual report, including audited financial statement of the Lessee, for the preceding fiscal year.

10. COMPLIANCE WITH LAWS AND RULES. The Lessee agrees, for the benefit of the Lessor, to comply in all respects with all laws of the jurisdictions in which the Units may be operated,

with the Interchange Rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor hereunder.

11. MAINTENANCE OF UNITS. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance shall immediately be vested in the Lessor as its respective interests may appear in the Unit itself.

12. REPORTS REQUIRED OF LESSOR. The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing thereof to the Lessee.

13. INDEMNITY OF LESSOR BY LESSEE. The Lessee agrees to indemnify and save harmless the Lessor against any charge or claim made against the Lessor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor may incur in any manner by reason of entering into or the performance of this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease. Without limiting the generality of the foregoing, the Lessee specifically agrees to indemnify and save harmless the Lessor against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury to any person.

The indemnities arising under this paragraph shall include but not be limited to charges, claims, expenses, losses and liabilities arising as a result of Lessor's negligence, and shall survive payment of all other obligations under this Lease and the termination of this Lease.

14. PURCHASE AND RENEWAL OPTIONS. Provided that the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months and not more than nine months prior to the end of the Initial Term of this Lease or any renewal term hereof, as the case may be, elect (a) to purchase all, but not fewer than all, of the Units then covered by this Lease at the end of such term or such renewal term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term or such extended term, or (b) to renew the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease for an additional two-year period commencing on the scheduled expiration of the Initial Term or any prior renewal term hereof as the case may be of this Lease, Provided, that no such renewed term shall extend beyond six years from the date of expiration of the Initial Term of this Lease, at a rental equal to the "Fair Rental Value" of such Units, payable in arrears in four semi-annual payments for each two-year period; such semi-annual payments to be made on May 31 and November 30 of each year of the applicable renewal term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession or (ii) a used equipment dealer) under no compulsion to buy and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

Fair Rental Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee-user (other than a lessee-user currently in possession) under no compulsion to lease and an informed and willing lessor under no compulsion to lease and, in such determination, cost of removal from the location of current use shall not be a deduction from such value.

If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or the Fair Rental Value of the relevant Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne equally by the Lessee and Lessor. Upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Builder free and clear of all liens, security interests and other encumbrances arising through the Lessor.



15. INSURANCE. The Lessee agrees that it will at all times during the term of this Lease, and at its own cost and expense, keep the Units insured at not less than the full insurable value thereof against loss by fire, windstorm and explosion and with extended coverage and against such other risks as are customarily insured against by companies owning property of a similar character and engaged in a business similar to that engaged in by the Lessee and will maintain public liability and property damage insurance with respect to the Units with limits of \$50,000,000.00 each occurrence with such deductible as Lessor may approve. All such insurance shall provide for a ten day prior written notice to the Lessor of any cancellation or reduction of coverages, shall cover both the interest of the Lessor and any assignee referred to in paragraph 16 of which Lessee has notice and of the Lessee in the Units or, as the case may be, shall protect the Lessor and its assigns and the Lessee in respect of risks arising out of the condition, maintenance, use or operation of the Units, and shall provide that losses, if any, in respect of the Units shall be payable to the Lessee and the Lessor and any such assignee as their respective interests may appear. The Lessee shall furnish annually to the Lessor satisfactory evidence of the maintenance of such insurance.

16. ASSIGNMENT; POSSESSION AND USE. This Lease and the rentals and other sums due hereunder shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor or Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraphs hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof upon its lines of railroad or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, provided, however, Lessee will not use any Unit outside the United States of America.

Nothing in this paragraph shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have purchased substantially all the assets of the Lessee.

17. DEFAULT. If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in paragraph 5 hereof and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease of or possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option may:

A. proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

B. by notice in writing to the Lessee, terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain

and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the use of the Unit during such period, such present value to be computed in each case on the basis of a 5% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease, and including, without limitation, (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the investment credit allowed by Section 38 of the Internal Revenue Code of 1954, as amended, lost by the Lessor as a result of the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default.

The remedies of this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

18. RETURN OF UNITS UPON DEFAULT. If this Lease shall terminate pursuant to Section 17 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks as the Lessor reasonably may designate;

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

C. transport the same to any place within the United States, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of

the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchase of any such Unit to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchase, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this paragraph 18, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit.

19. RETURN OF UNITS UPON EXPIRATION OF TERM. As soon as practicable on or after the expiration of the term of this Lease, the Lessee will (unless the Units are sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of any Units (other than any Unit that has been lost, stolen, completely destroyed or condemned) to the Lessor upon such storage tracks of the Lessee as the Lessor may reasonably designate and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period to any reasonable place within the United States, as directed by the Lessor; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; provided, however, that the Lessee shall not be liable except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume, and hold the Lessor harmless from all liability arising in respect of such notice.

20. RECORDING; EXPENSES. Promptly after the execution hereof, the Lessee will cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and

will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of the Lessor and its counsel, of the Lessor's interests hereunder in the Units, or for the purpose of carrying out the intention of this Lease and any assignment hereof. The Lessee will promptly furnish to the Lessor evidence of any such filing, registering, depositing or recording and of such publication of notice of such deposit.

21. INTEREST ON OVERDUE RENTALS. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 9-1/4% per annum of the overdue rentals for the period of time during which they are overdue.

22. NOTICES. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States mails, first-class postage prepaid, addressed as follows:

If to Lessor: First National Bank of Louisville  
First National Tower  
Louisville, Kentucky 40202

ATTENTION: Leasing Department

If to Lessee: AMAX Coal Company  
105 South Meridian  
Indianapolis, Indiana 46225

ATTENTION: Vice-President and General Counsel

or addressed to either party at such other address as such party shall hereafter furnish in writing to the other party.

23. SEVERABILITY; EFFECT AND MODIFICATION OF LEASE. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers as of the Lessor and the Lessee.

24. EXECUTION. This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

Although this Lease is dated as first set out above for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

25. LAW GOVERNING. This Lease shall be construed

in accordance with the laws of the Commonwealth of Kentucky.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers as of the date first above written.

FIRST NATIONAL BANK OF LOUISVILLE

By: Sanford Cobb Boyce  
Title: Associate Lending Officer

AMAX Coal Company,  
a division of AMAX Inc.

By: John W. Scales  
Title: Vice President

COMMONWEALTH OF KENTUCKY )  
COUNTY OF JEFFERSON ) SS

On this 12<sup>th</sup> day of May, 1976, before me personally appeared Sanford Cobb Boyce to me personally known, who, being by me duly sworn, says that he is a Associate Lending Officer of FIRST NATIONAL BANK OF LOUISVILLE, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Wm. L. Shaw  
Notary Public, Jefferson Co., Ky.

[NOTARIAL SEAL]

My Commission expires: June 10, 1978

STATE OF INDIANA )  
COUNTY OF MARION ) SS

On this 12<sup>th</sup> day of May, 1976, before me personally appeared John W. Scales to me personally known, who, being by me duly sworn, says that he is a Vice President of AMAX Coal Company, a division of AMAX Inc., and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

George L. Raymond  
Notary Public, Marion Co., Indiana

[NOTARIAL SEAL]

My Commission expires: 3/12/79

SCHEDULE I

<u>Amount</u>	<u>Description of Units</u>	<u>Identifying Numbers</u>	<u>Cost</u>
8	100-ton Rapid Discharge Coal Car manufactured by Ortner Freight Car Company	AMAX #281 through #288	\$ 36,208.09 each

TOTAL COST. . . \$298,664.72

## SCHEDULE II

The Casualty Value of any Unit on any rental payment date shall be the percentage set forth in the following schedule opposite such rental payment date times the cost of the Unit as set out in Schedule I.

<u>Payment No.</u>	<u>Percentage</u>
1 (Nov 31, 1976)	104
2	103.2
3	102.6
4	101.7
5	100.7
6	99.4
7	91.5
8	89.8
9	87.9
10	85.8
11	77.1
12	74.7
13	72.1
14	69.3
15	59.9
16	56.7
17	53.5
18	50.2
19	46.8
20	43.3
21	39.7
22	36.1
23	32.2
24	28.4
25	24.3
26 (May 31, 1989)	22.0
during all renewal terms	20.0



## CERTIFICATE

I, George L. Raymond, hereby certify  
on behalf of AMAX Coal Company, a division of AMAX Inc. that,  
as of the date hereof:

1. The Property constitutes "Section 38 property" as that term is used in Section 48(a) of the Internal Revenue Code of 1954 (the "Code").
2. There has been no "original use", as that term is used in Section 48(b) of the Code, of the Property.

As used above the term "Property" means eight 100 ton  
Rapid Discharge Coal Cars Numbered AMAX 281 through 288 inclusive.

I further certify that attached hereto is a true copy  
of a resolution or other document in full force and effect on  
this date authorizing John W. Scales who is  
a Vice-President of AMAX Coal Company to execute  
a lease between First National Bank of Louisville and AMAX Coal  
Company involving eight railroad cars.

George L. Raymond, attorney  
Title:

Dated May 12, 1976